IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No.471 of 1990
Date of decision : 17.11.2006

Lakhbir Singh

....Appellant

Versus

Mohan Singh & another

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

....

Present : Ms.Alka Sarin, Advocate
for the appellant.

Mr. K.S.Rekhi, Advocate
for respondent No.1.

...

MAHESH GROVER, J.

In this Regular Second Appeal initiated at the behest of the defendant, challenge has been made to the judgment of the learned first appellate court dated 31.1.1990 vide which the judgment of the learned trial court dated 2.9.1987 has been reversed.

Briefly stated, the facts of the case are that the plaintiff Mohan Singh (respondent No.1 herein) filed a suit for possession by way of specific performance against the appellant and one Charan Kaur, the vendor and executor of the alleged agreement to sell land measuring 16 kanals and 18 marlas in favour of respondent No.1.

It was pleaded by the plaintiff-respondent No.1 that the suit land was jointly owned by one Hazara Singh, Tara Singh and Shangara Singh sons of Jagat Singh in equal shares. The suit land fell

to the share of Tara Singh after the family partition between the brothers aforementioned. Charan Kaur (respondent No.2 herein) had inherited the share of Tara Singh after his death. On 28.1.1986 she executed an agreement to sell in favour of the plaintiff-respondent No.1 to sell the suit land in his favour for a consideration of Rs.30,000/-. A sum of Rs.10,000/- was paid by way of earnest money and it was agreed that the sale would be finally executed by 5th of Har, 1986 (which date is equivalent to 19.6.1986). It was also stipulated in the agreement that in the event of the failure to execute the sale deed the respondent No.2 Charan Kaur would pay damages to the respondent No.1 to the tune of Rs.10,000/-. The plaintiff-respondent No.1 had also made an alternative prayer for Rs.20,000/- as damages and went on to plead that on the stipulated date he had remained present in the office of Sub-Registrar, Ajnala and waited for respondent No.2 but she failed to turn up to perform her part of the agreement. The respondent No.1 had got his presence marked in the office of Sub-Registrar, Ajnala and since he was always ready and willing to perform his part of the agreement he had accordingly approached the respondent No.2 on 18.7.1986 and tendered the balance sale price of Rs.20,000/- which she refused to accept and pleaded that the sale had already been executed on 5.6.1986 in favour of the appellant under duress as she had been kidnapped by him and no sale consideration was ever paid to her by the appellant.

In this backdrop, a three-fold prayer was made by the respondent No.1 to say that the possession of the suit land be given to him after specific performance of the aforesaid agreement dated

28.1.1986; alternatively the damages be given to him and the sale deed dated 5.6.1986 be declared null and void, being without any consideration and against law.

The suit was resisted by the present appellant only. Respondent No.2 did not contest the suit at all even though she filed the written statement admitting the claim of the plaintiff-respondent No.1. The appellant controverted the allegations made in the suit and stated that there was no agreement in favour of respondent No.1 and also denied that the sale in his favour was a result of any threat or coercion, rather it was an act of free volition done for an amount of Rs.16,000/- which was the sale consideration.

On the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled to the specific performance of the agreement dated 28.1.1986 and in alternative suit for recovery of Rs.20,000/- as damages and advance sale price? OPP
2. Whether the sale deed dated 5.6.1986 is illegal, without consideration and is liable to be set aside?OPP
3. Whether defendant No.2 is bona fide purchaser for consideration and without notice?OPD
4. Relief.

The learned trial court after appraisal of the evidence before it, held, that the sale deed in favour of the present appellant was validly executed and that he was a bona fide purchaser without

any notice of the earlier agreement to sell and since the sale in favour of the appellant had already been effected rendering the earlier agreement dated 28.1.1986 inexecutable, directed the respondent No.1 to be compensated in terms of money amounting to Rs.20,000/-. Aggrieved by the judgment of the learned trial court the plaintiff-respondent No.1 filed an appeal before the Addl. District Judge, Amritsar which was accepted and the finding of the learned trial court were upset vide judgment dated 31.1.1990 necessitating the present regular second appeal.

It was contended by Ms. Alka Sarin, learned counsel for the appellant that the impugned judgment of the learned lower appellate court is erroneous in as much it has relied on Ex.P.4 which was a suit filed by the appellant prior to the execution of the agreement in favour of respondent No.1 which has been construed as sufficient notice of the intention of respondent No.2 to alienate the land. It was contended that in the absence of any specific notice of the agreement to sell the finding recorded by the learned lower appellate court was perverse. Besides, the respondent No.1 had failed to adduce any evidence to show his readiness and willingness to perform his part of the agreement and it was further contended that the sale deed had been validly executed by the respondent No.2 in favour of the appellant and the learned trial court had rightly granted the alternate prayer of the plaintiff-respondent No.1.

The submissions raised by the learned counsel for the appellant were controverted by the learned counsel for respondent No.1 who contended that the findings of the learned lower appellate

court were perfectly in order inasmuch as the agreement to sell had been executed in favour of respondent No.1 and he was always ready and willing to perform his part of the agreement which is reflected from the fact that he had presented himself before the Sub-Registrar on the specified date. The subsequent sale in favour of the appellant was a result of fraud.

I have heard the learned counsel for the parties and have perused the record.

The learned lower appellate court while reversing the finding of the learned trial court had relied on Ex.P4 which is the suit filed by the appellant against the respondent No.2 to draw an inference of sufficient notice of the intention to sell the suit land. I am afraid this reasoning of the learned lower appellate court was erroneous. The appellant and respondent No.2 are related and it was not unnatural for the appellant to have filed a suit to claim a share in the property and to seek injunction to restrain the respondent No.1 from alienating the suit property even though the fact whether he had a right or not could have been debatable. In any eventuality the knowledge of the existence of an agreement to sell could not have been inferred from a mere filing of the suit to establish either a rightful claim or a wishful claim to the property. The finding of the lower appellate court in this backdrop that the appellant was nota bona fide purchaser cannot be sustained.

That apart, there is evidence on record to show that the respondent No.1 was in jail up to 17.6.1987. The period of incarceration, however has not been specified. The respondent No.1

has admitted in his cross-examination that on 17.6.1987 when he came out of jail he had met the respondent No.1 to apprise him of the execution of sale dated 5.6.1986 in favour of the appellant. Once this fact was known to the respondent No.1 there was no occasion for him to visit the office of the Sub-Registrar on 19.6.1986. This apparently was a ploy to create evidence in order to enforce his plea for specific performance. In so far as the appellant is concerned, there is no hesitation to hold that he was a bona fide purchaser without any notice and the sale in his favour had rendered the earlier agreement in favour of respondent No.1 inexecutable.

The question of law, therefore, that arises in the present appeal is (i) whether in the facts and circumstances of the case the court below could have exercised its discretion under Section 20 of the Specific Relief Act or not and (ii) whether the appellant was a bona fide purchaser for consideration without any notice.

The Hon'ble Supreme Court in **Rajeshwari v. Puran Indoria,** 2005(7) Supreme Court cases 60 has observed as follows :

> "Normally, a suit for specific performance of an agreement for sale of immovable property involves the following questions: (1) whether the plaintiff was ready and willing to perform his part of the contract in terms of Section 16 of the Specific Relief Act, 1963, (2) whether it was a case for exercise of discretion by the court to decree specific performance in terms of Section 20 of the Specific Relief Act, and (3) whether there were laches on the part of the plaintiff in approaching

the court to enforce specific performance of the contract. In some cases, a question of limitation may also arise in the context of Article 54 of the Limitation Act, 1963 on the terms of the agreement for sale. Other questions like the genuineness of the agreement, abandoning of the right to specific performance, a novation and so on, may also arise in some cases. No doubt, a finding on the three primary aspects indicated above would depend upon the appreciation of the pleadings and the evidence in the case in the light of the surrounding circumstances. These questions, by and large, may not be questions of law of general importance. But they cannot also be considered to be pure questions of fact based on an appreciation of the evidence in the case. They are questions which have to be adjudicated upon, in the context of the relevant provisions of the Specific Relief Act and the Limitation Act (if the question of limitation is involved). Though an order in exercise of discretion may not involve a substantial question of law, the question whether a court could, in law, exercise a discretion at all for decreeing specific performance, could be a question of law that substantially affects the right of parties in that suit. Therefore, in the case on hand, the High Court was not justified in dismissing the second appeal in the manner in which it has done."

This court, therefore, under the exercise of its powers

under Section 100 of the Code of Civil Procedure is not precluded from peering into the question whether a court could, in law, exercise a discretion at all for decreeing a suit for specific performance as has been observed by the apex court.

Consequently, by testing the evidence in the backdrop of the afore-stated facts the learned lower appellate court ought to have explored the possibility of exercising its discretion under Section 20 of the Specific Relief Act more so when there was overwhelming evidence to show that the appellant was a bona fide purchaser without any notice and that a sale deed had been registered on 5.6.1986 in his favour. There was no evidence of fraud or threat or coercion as pleaded by the respondent No.1. The sale in favour of appellant was valid as he was a bona fide purchaser for consideration and without notice. This rendered the agreement to sell in favour of respondent No.1 inexecutable. The alternative prayer, therefore, was the only rightful course that ought to have been adopted by the lower appellate court. Besides it was the bounden duty of the court to give reasons for not exercising its discretion under Section 20 especially in view of the fact that the trial court had done so. While discarding the course adopted by the courts below, the Appellate Court had to justify its deviation by giving cogent reasons.

That apart, there is no evidence on record by which it could be said that the respondent No.1 was ready and willing to perform his part of the agreement which is the very essence of a suit for specific performance. The factum of readiness and willingness to perform a part of the agreement is to be adjudged from the conduct of

the parties, from the attending circumstances and evidence on record. The plaintiff-respondent No.1 having failed to show his readiness and willingness cannot take advantage of purchase made under bona fide belief by the appellant.

For the foregoing reasons the question of law stood answered as above.

The appeal is allowed.

17.11.2006 (MAHESH GROVER)
JUDGE

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